

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

VINCENT GARDUÑO,

Plaintiff,

v.

No. 17-cv-1226 JCH/SMV

**DOUGLAS ADAVALOS, FNU WARD,
FNU MADRID, FNU LNU,**

Defendants.

**ORDER GRANTING LEAVE TO PROCEED
PURSUANT TO 28 U.S.C. § 1915(b)
AND TO MAKE PAYMENTS OR SHOW CAUSE**

THIS MATTER is before the Court on Plaintiff's Application to Proceed in District Court without Prepayment of Fees and Costs and attached inmate account statement [Doc. 5], filed on January 10, 2018. Based on the financial information provided by Plaintiff, the Court finds that Plaintiff is unable to prepay the \$350 filing fee¹ in this civil rights action, and therefore, Plaintiff's application will be granted.

Because Plaintiff was a prisoner at the time he filed his Complaint for Violation of Civil Rights (Prisoner Complaint) [Doc. 1], he is "required to pay the full amount of [the] filing fee." § 1915(b)(1). Pursuant to § 1915(b)(1), Plaintiff must make an initial partial payment of "20 percent of the greater of—(A) the average monthly deposits to the prisoner's account; or (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint" § 1915(b)(1). Plaintiff's inmate trust account

¹ See 28 U.S.C. § 1914(a) ("The clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal, or otherwise, to pay a filing fee of \$350 . . .").

statement reflects that the average monthly deposits in his inmate account exceed his average monthly balance. [Doc. 5]. The average monthly deposits in Plaintiff's inmate account are \$90, 20% of which is \$18. Plaintiff submitted a payment in the amount of \$80 on January 3, 2018, and therefore, the \$18 initial partial payment has been paid. *See* [Docs. 4, 5].

Still, Plaintiff is required "to make monthly payments of 20 percent of the preceding month's income credited [to his account] each time the amount in the account exceeds \$10 until the filing fees are paid." § 1915(b)(2). If Plaintiff fails to make a monthly payment or to show cause why such payment should be excused, his Complaint may be dismissed without prejudice without further notice.

IT IS THEREFORE ORDERED that Plaintiff's Application to Proceed in District Court without Prepaying Fees or Costs [Doc. 5] be **GRANTED**;

IT IS FURTHER ORDERED that Plaintiff make monthly payments of 20% of the preceding month's income credited to his account or show cause why the designated payments should be excused.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge